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ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
November 9, 2016

A public hearing of the Zoning Board of Adjustment was held on Wednesday, November 9, 2016 at 6:30 PM in Room 208, City Hall.

Members in attendance were:

Gerry Reppucci, Chair
Jack Currier, Vice Chair
Rob Shaw
J.P. Boucher
Kathy Vitale
Mariellen MacKay

Carter Falk, AICP, Deputy Planning Manager/Zoning

Mr. Reppucci explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Reppucci explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws. Mr. Reppucci also explained procedures involving the timing light.

Mr. Reppucci said he wanted to take the rehearing request first on the agenda.

REHEARING REQUESTS:

- 1. 711 West Hollis Street Realty Trust, LLC, Michelle Rodriguez, Manager (Owner) 711 West Hollis Street (Sheet F Lot 54) requesting variance to exceed maximum principal structures permitted on one lot, one existing, four additional detached units proposed for a total of five units. R9 Zone, Ward 5.**

Mr. Reppucci said that this case was heard, and relief was granted by the Board at the September 27th meeting. He said that the Planning Department received a letter that there was a notification error, that the abutter notice went to an outdated homeowners association.

Mr. Shaw said that there were other issues raised in the letter from the Attorney.

Mr. Reppucci said that since it will be a complete rehearing from the beginning, there's no need to go over the other points raised in their letter, as everything will be addressed in the new public hearing.

Mr. Shaw said that for the record, the Board should note that there are other issues in the letter besides the notification

MOTION by Mr. Reppucci to rehear the case based upon the notification error.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

PUBLIC HEARINGS:

1. **Mary E. Castonguay, Trustee of Henry P. & Mary E. Castonguay Rev. Trust (Owner) Raisanen Homes Elite, LLC (Applicant) 738 West Hollis Street (Sheet D Lot 75) requesting variance to exceed maximum principal structures permitted on one lot, one existing, ten single-family detached units proposed. R9 Zone, Ward 5. [TABLED FROM 10-25-16 MEETING]**

Voting on this case:

Gerry Reppucci
Jack Currier
Rob Shaw
JP Boucher
Mariellen MacKay

MOTION by Mr. Reppucci to take the case off the table.

SECONDED by Mr. Currier.

MOTION APPROVED UNANIMOUSLY 5-0.

Attorney Brad Westgate, Winer and Bennett, 111 Concord Street, Nashua, NH. Atty. Westgate said that there was a full public hearing, and the case was tabled. He said that although there is new information being provided, he wanted the information from the first hearing to be part of the public record.

Atty. Westgate said that the variance requested is from the section of the Code that allows only one principal structure per lot. He said that they are now proposing nine single-family dwelling units in a condominium form of ownership.

Atty. Westgate said that there is also an amended attachment to the application that was sent to Mr. Falk, and it goes over the basic changes to the plan from the original layout.

Chad Branon, Fieldstone Land Consultants, Milford, NH. Mr. Branon said that at the September 27th meeting, the Board raised a number of questions and concerns, as well as some abutters, consisting primarily of the density of the proposal, and the associated separation to the neighboring properties. He said that there was also some concerns regarding how the proposal fits into the character of the neighborhood, as well as some concerns to some Planning Board items such as parking and curbing.

Mr. Branon said that the new plan addresses the previous concerns. He said that the density is reduced to nine units. He said that there is also a "T-style" turnaround rather than a cul-de-sac. He said that this created a considerable amount of area that has helped the area. He passed out a plan of the development to the Board members.

Mr. Branon said that the density is now one unit per 12,120 square feet. He said that all of the limited common areas now exceed 9,000 square feet, which was a previous concern by the Board. He said that the layout significantly increases the separation of the units and roadway to the abutting property. He said that they are greater than 30 feet now to the abutting property to the north, and 35 feet to the south, a considerable improvement to the last plan.

Mr. Branon the T-turnaround is also about 30 feet to the abutting property to the north, a significant improvement to the old plan, as the cul-de-sac was about 10 feet from the northern property boundary. He said that the separation between units has been increased, with an average of about 35 feet, where 20 feet is required. He said that the new plan is very consistent with the neighborhood and surrounding developments. He said that in comparing the lots to the Mandinbarb Circle lots, their lots range from 9,858 square feet to 17,532 square feet. He

said that the four units in the proposed development that abut Mandinbarb are 9,050 square feet to 20,500 square feet, which is in harmony with the neighborhood.

Mr. Branon said that they are now using granite curbs, instead of asphalt. He said that the driveways were also widened to allow for two cars to park outside of the garage, so that will alleviate people from parking on the street. He said that the proposed roadway is a 24 foot wide private road, which is consistent with similar projects in the area, and the Fire Marshal has stated that they will sign off on that width, and the hydrants are also fine with the Fire Department.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Matt Chapman, 9 Mandinbarb Circle, Nashua, NH. Mr. Chapman said that since the previous meeting, the applicant has listened to our concerns, and the redesign has his blessing, and they've done their due diligence to fulfill the abutters concerns.

SPEAKING IN FAVOR - REBUTTAL:

Atty. Westgate said that they have no further comment.

Mr. Currier said he was hoping for a 28-foot wide road, based upon the prior correspondence, but now the Fire Department has given their blessing on the road. He said lately he's surveyed other nearby roads and was kind of surprised how thin some of them are. He said that the Fire Department has stated that the road is now ok, so it's ok with him.

Mr. Reppucci said that we have the letter saying that the Fire Department is ok with a 24-foot wide road, he asked if that exempted the Planning Board from reviewing that road width, and altering it.

Mr. Currier said that if the Planning Board says that they have to stick to a 28-foot wide road, that there may be other impacts to the plan, such as setbacks. He said it's concerning that the Planning Board may be stuck with that, since we are sort of a

dual-review situation. He said he doesn't want to bind the Planning Board, as it's playing one Board against another.

Mr. Reppucci said that if the Planning Board decides to change the width, it may change the setbacks, which will require the case to come back to the Zoning Board. He said that should the Board support this request, it should be in the conditions.

Mr. Shaw said that he had a lot of concerns about the setbacks, and the fact that they only had to meet side yard setbacks, the applicant has made great strides to make this like a standard R9 development. He said that where the cul-de-sac had been extremely close before to one house on Mandinbarb, the new proposal goes a great way to have a better treatment of traffic to make it function as a standard R9 development.

Mrs. MacKay said she concurs with Mr. Shaw and Mr. Currier. She said that she is glad that the applicant listened to the abutters, and did the best they could to accommodate them.

MOTION by Mr. Currier to approve the variance application on behalf of the applicant as advertised. He said that the Board finds that the variance is needed to enable the applicant's proposed use of the property, and given the special conditions of the property, which is that the Board finds that the property is kind of long and narrow, and it's been a lot of record for many years, and the applicant seeks to develop the property in an R9 fashion, which is analogous to the abutting properties.

Mr. Currier said that the proposed use would be within the spirit and intent of the ordinance, and will not adversely affect property values of surrounding parcels, and that the Board finds that the request is not contrary to the public interest, and substantial justice is served.

Mr. Currier said that a stipulation of approval is that the approved plan before the Board shows a 24-foot wide roadway with granite curbing, and the Board does not intend to lock that design in, should further review by the Planning Board seek a wider road, then it will be required to come back before the Zoning Board.

SECONDED by Mrs. MacKay.

Mr. Shaw said that the buffer has to be maintained adjacent to

and abutting the cemetery.

MOTION CARRIED UNANIMOUSLY 5-0.

2. Dillard E. & Laurie D. Collins (Owners) 7 Morse Avenue (Sheet 6 Lot 27) requesting variance to exceed maximum driveway width, 24 feet permitted, an extra 6 feet proposed for a total width of 30 feet. R9 Zone, Ward 7.

Voting on this case:

Gerry Reppucci
Jack Currier
JP Boucher
Rob Shaw
Mariellen MacKay

Dillard Collins, 7 Morse Avenue, Nashua, NH. Mr. Collins said that the home is part of his wife's family, and her family has been there about a hundred years, and his father also lives on the street as well. He said this request is really a follow-up to a variance that was granted by the Board in January, for an attached garage. He said he was unaware of the need to apply for a variance for a wider driveway at that time, and the paving company wasn't aware either.

Mr. Collins said that they want to have a thirty foot wide driveway, and wanted that from the beginning. He said that they did have a two-car paved driveway there with no garage, and wanted to go with a three-car garage. He said that all the houses are really close to the street, and it's a short dead-end, and it's very narrow, about 15 feet. He said that the driveway will help to alleviate off-street parking. He said that what is proposed is typical in the neighborhood, and it won't be out of character.

SPEAKING IN FAVOR:

Pearly Denault, 20 Morse Avenue, Nashua NH. Mr. Denault said that this is his daughters property, and is in favor of the request, and it will help with parking.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mrs. MacKay to approve the variance application on behalf of the applicant as advertised. She said that the Board finds that the variance is needed to enable the applicant's proposed use of the property, and given the special conditions of the property, which is that there is a limited width of right-of-way, and if cars are parked on the street, it would be difficult to get by and pass a car.

Mrs. MacKay said that the proposed use would be within the spirit and intent of the ordinance, and will not adversely affect property values of surrounding parcels, and that the Board finds that the request is not contrary to the public interest, and substantial justice is served.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

3. David J. & Brenda N. Levesque (Owners) 190 Tinker Road (Sheet H Lot 71) requesting variance to exceed maximum accessory use area, 40% permitted, 77.5% requested, to maintain an existing barn and shed. R40 Zone, Ward 2.

Voting on this case:

Gerry Reppucci
Jack Currier
Rob Shaw
JP Boucher
Mariellen MacKay

Brenda Levesque, 190 Tinker Road, Nashua, NH. Mrs. Levesque said that there are multiple buildings on the property, she said that her in-laws were living with her, and all the buildings are well maintained. She said that she is over the accessory use area percentage, as there is a barn and a shed. She said that all the buildings have been there for quite some time.

Mr. Currier said that the barn is large, as compared to the house, and asked if that is why she is applying for the 77%.

Mr. Falk agreed. He said the 77% is all of the accessory structures on the property.

Mr. Shaw said that the ordinance doesn't take into account the size of the lot, it is taken from the inside of the principal dwelling.

Mr. Currier said he initially was concerned about the 77% request, but the property is very large, and you can't even see the barn from the street, and the request isn't out of character with the neighborhood, and it's not out of place.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Shaw to approve the variance application on behalf of the applicant as advertised. He said that the Board finds that the variance is needed to enable the applicant's proposed use of the property, and given the special conditions of the property, and the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance. He said that it is a very large property, and the square footage of the lot is over 200,000 square feet, and the formula that is applied is based upon the size of the primary structure, whereas the accessory uses are still relatively small in relation to the size of the lot.

Mr. Shaw said that the proposed use would be within the spirit and intent of the ordinance, and will not adversely affect property values of surrounding parcels. He said that the request is not contrary to the public interest, and that substantial justice is met.

SECONDED by Mr. Currier.

MOTION CARRIED UNANIMOUSLY 5-0.

4. Jennifer Delker-Montplaisir (Owner) 1 Main Street, LLC (Applicant) 5 Merrimack Street (Sheet 67 Lot 39) requesting use variance to convert a single family home into a professional office use. RB Zone, Ward 3.

Voting on this case:

Gerry Reppucci
Jack Currier
Rob Shaw
JP Boucher
Mariellen MacKay

Dr. Evan Greenwald, Director of the Counseling Center, 1 Main Street, Nashua NH. Dr. Greenwald said that the property is for sale, and the owner has had some difficulty selling it, it's disadvantaged in a number of ways. He passed out some information to the Board.

Dr. Greenwald said that the property has been on the market for about 45 days, and in looking at the supply and demand of homes in Nashua, that's a long time. He said it is directly in back of the Fire Station, and it's a fairly small single-family home. He identified other larger apartment buildings in the area as well as a few duplex units.

Dr. Greenwald said that he would like to have some administrative staff move into the house from 8 Auburn Street, which is in very close proximity, right around the corner. He said that the house is about 1,300 square feet in size, and there is parking for three or four cars. He said he will need to install a handicap ramp as well. He said that there is parking on one side of Merrimack Street.

Mr. Reppucci asked to confirm if there would be only administrative staff there, no services.

Dr. Greenwald said there would be no services, it's only space for administrative staff.

Mr. Falk said that if patients were to go there, it would be classified as a medical office, and that requirement has different parking requirements and it would be a more intensive use. He said that office use requires only two parking spaces to meet the ordinance.

Mr. Currier said that there seems to be a fair amount of parking on the street, and it says that there are three spaces on the

site. He said that he has concerns for the abutters for any parking on the street.

Mr. Shaw asked to confirm if there would be any exterior changes to the building, and asked about signage.

Dr. Greenwald said he was originally not going to do any signage, and wanted to keep the building looking more historic, but said that there may be a need for a small sign, and understands that it will have to go to the Historic Commission for signage. He said it would be a small sign.

Mr. Falk said that in the RB Zone, the Code allows for a very small sign, and it would require Historic District Commission approval no matter how large or small it is.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

Brannen Huske, 12 Merrimack Street, Nashua, NH. Mr. Huske said his house is a single-family home. He said that his concerns are with the parking on the street, it's a very narrow one-way street, and in the winter it's rough. He said that if people park on the street, and there's a fire, cars could not make it through. He said that there are a lot of kids in the area, and it's near a park and ball fields, and is concerned about a lot of people coming in and out throughout the day in the neighborhood. He said the street is used a lot.

Emanuel Gomes, 7-9 Merrimack Street, Nashua, NH. Mr. Gomes said that his mother owns the property. He said that there are three single-family homes and three duplexes on the street. He said that the concern is that the parking is very difficult. He said numerous times he's had to find people to move their cars because they're in the way. He said during snowstorms, there is no place to put the snow. He said it's a really tight situation. He said that during football and baseball games at the park, there are cars on the street as well. He said that it's difficult for children to walk on the street in the winter, as there is a lot of snow and cars. He said that the whole area is very congested, and it's residential, not commercial. It's nice for a family, it's not a commercial zone.

SPEAKING IN FAVOR - REBUTTAL:

Dr. Greenwald said that there is parking on one side of Merrimack Street. He said that he understands that there are shift changes at the Fire Station, and cars and trucks are on the street. He said that his staff already parks on Abbott Street in front of the Historic Society, and there's ample parking there and it's more wide open.

Mr. Reppucci asked how many people are expected to work in the building.

Dr. Greenwald said he expects to have eleven people there.

Mr. Currier said it seems that the abutters concerns are valid. He said he's struggling with how to achieve success here for everyone.

Dr. Greenwald said he's in the business of caring for people, and will take the parking seriously and will try to work with the neighbors to accommodate the on-street parking. He said that there will never be anyone there after 6:00 p.m.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS - REBUTTAL:

Mr. Gomes said that they will have eleven employees there. He said it will be a lot of volume, and there will be parking in front of his house. He said he can only fit compact cars in his own driveway, and there is a lot of car shuffling on a daily basis. He said he's lived there for twenty years, and it's always been an issue. He said it's only been on the market for 45 days. He said if they want a sign, which further makes it look like a commercial business instead of residential.

Mrs. MacKay said she's very familiar with the street. She said it's ok to be a walker on the street, but coming down the street it's very tight, and more people parking on the street will be problematic, and there are a lot of children there. She said that the Ward 3 Alderman has contacted her, and stated that they heard from a neighbor who had concerns. She said that parking on this street is a huge concern.

Ms. Vitale said that the main concern is the number of people that would be working in the building, and there is a big

concern where people will be parking, and even how it would be if the property was sold.

Mr. Reppucci said that the eleven employees is very intensive. He said it's possible that the Board could put stipulations on the parking, such as employees parking on the Auburn Street site, but it will be hard to enforce. He said he would expect that the employees will all park at the site. He said he's having a hard time supporting the application, and would have to be convinced to support it.

Mr. Boucher said that he was by there when there was a shift change for the Fire Station, and got stuck for a little bit. He said he understands the applicant trying to protect his investment for future use. He said it would be hard to restrict or manage the parking on the street, it's all public parking. He said he's having a hard time accepting the hardship at face value, it's only been on the market a short time.

Mr. Currier said he is sensitive to the abutters concerns, and said that the parking will be hard to control, even with the best intentions, and it would further aggravate the parking problem that exists now. He said he's uncomfortable approving a use with eleven employees there every day. He said by approving this, it would be exacerbating the problem for the folks that reside on the street.

Mrs. MacKay said in rainy or snowy weather, all of the employees will not walk there. She said it's human nature to try to find a parking place that is close. She said she is having a hard time trying to find a way to say yes to the neighbors and yes to the applicant.

Mr. Shaw said that he doesn't see the hardship in converting this long-standing single-family home into a commercial space, with the parking issue that has been discussed on this street, as it will be much more intense. He said he has concerns about a commercial encroachment into this neighborhood.

Ms. Vitale said that besides the Fire Station, the street is residential, and it would be doing a disservice to the neighborhood to support this application.

Mr. Reppucci said that he can't envision converting a residential house into office use with that number of employees. He said it's a huge number of employees for a small house.

MOTION by Mr. Shaw to deny the use variance application on behalf of the applicant as advertised. He said that the Board does not see any special conditions with the property, despite the argument about its time on the market, and said that the use of a single family is consistent with much of the neighborhood.

Mr. Shaw said that it does not meet the spirit and intent of the neighborhood to convert the usage from a residential house. He said it's not clear one way or another about the property values of surrounding parcels. He said that granting this application would be contrary to the public interest, as neighbors gave compelling testimony relative to parking and the intensity of usage, and the number of employees coming and going into the building. He said that substantial justice is served to the neighborhood in not granting this application.

SECONDED by Mr. Boucher.

MOTION CARRIED UNANIMOUSLY 5-0.

MISCELLANEOUS:

REGIONAL IMPACT:

The Board did not see any cases of Regional Impact.

MINUTES:

9-13-16:

MOTION by Mr. Currier to approve the minutes as presented, waive the reading, and place the minutes in the permanent file.

SECONDED by Mr. Reppucci.

MOTION CARRIED UNANIMOUSLY 5-0.

10-11-16:

MOTION by Mr. Shaw to approve the minutes as presented, waive the reading, and place the minutes in the permanent file.

SECONDED by Mrs. MacKay.

MOTION CARRIED UNANIMOUSLY 4-0 (Mr. Currier recused).

Mr. Reppucci mentioned that this will probably be his last meeting. He said he believes that his seat will still be open until someone is appointed to fill it. He said that an expired term is still in force until its seat is filled. He said it's been a pleasure to serve on this Board.

ADJOURNMENT:

Mr. Reppucci called the meeting closed at 8:45 p.m.

Submitted by: Mr. Boucher, Clerk.

CF - Taped Hearing